UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,913	02/20/2004	Thilo Rusche	2500.0002C	5324

27896   7590   09/30/2008
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EXAMINER
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ART UNIT	PAPER NUMBER
2144	

MAIL DATE	DELIVERY MODE
09/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	10/781,913	RUSCHE ET AL.
	Examiner	Art Unit	
	Yemane Mesfin	2144	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>25 July 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b)☐ They raise the issue of new matter (see NOTE below);

  (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: *None*.

  Claim(s) objected to: *None*.

  Claim(s) rejected: *1-16*.

  Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /William C. Vaughn, Jr./
  Supervisory Patent Examiner, Art Unit 2144

Continuation of 11. does NOT place the application in condition for allowance because: The invention as best understood by the examiner is substantially taught by the teachings of Allison (see final rejection of claims 1 and 8 on page 2). Allison taught the invention as claimed except for the use of array of timestamps in association with the received messages and removing of entries in the array of timestamps that are alder than a fixed window size as argued below.

The Examiner cited particular pages/columns and line numbers in the references/teachings of Allison and Gould as applied to the claims for the convenience of the applicant. However, it appears that applicant has failed to appreciate the teachings of the already combined teachings of Allison and Gould and all that is inherent therein.

Argument: Applicant argues, "Gould is, in fact, silent as to whether an array of timestamps is stored. Gould is focused only on comparing a first timestamp and an "nth" timestamp. There is no mention of storing or acting on timestamps of emails that may have been received between the first timestamp and the "nth" timestamp" (See Remarks, Page 6, 3).

Response: Examiner respectfully disagrees with that contention. Examiner has no response to such language of "...acting on timestamps of emails that may have been received between the first timestamp and the "nth" timestamp" as such language is not claimed. No removing of timestamps between the first timestamp and the nth timestamp is claimed. However, as shown before in the last office action, Gould disclosed a time stamp along with e-mail message, capturing the originating IP address (i.e., source) and the timestamp corresponding to the e-mail message (See Fig. 2, # 205); storing the respective timestamp and originating IP address (i.e., source identification) and a counter associated with that message (see Fig. 2, # 215) and when another message from the same source is received, incrementing the email message counter already stored (Fig. 2, # 220 and 0035-0038). Gould taught storing time stamps of received electronic massages(see Fig. 2, # 215, paragraphs 0035-0037, 0045 and paragraph 0047).

Argument: The applicant recites/argues that Gould does not teach "removing entries in the array of timestamps that are older than a fixed window size, and decrementing the source counter for each entry so removed." Gould fails to disclose anything like these claimed limitations. More specifically, Gould is silent regarding removing or deleting entries from the described "IP address record," or decrementing a counter as a result of any such operation. Since Gould does not describe removal or deletion of entries, it is not possible that Gould teaches the specific methodology of removing entries based on a "fixed window size," or decrementing a counter as a result thereof" (See Remarks, Page 7, 2-3).

Response: Examiner disagrees. As set forth in the claim rejection, examiner pointed to specific sections of Allison directed a spam detection system utilizing a source counter, counting a number of messages received within a predetermined time frame and clearing (i.e., resetting/removing messages) the messages once the predetermined number of messages does not pass a predetermined threshold. Furthermore, as already acknowledged by the inventive entity, Gould taught storing messages along with a respective timestamps of the first message and the nth message and incrementing a source counter for purposes of detecting unsolicited messages from a specific source by counting messages from a source within predetermined time frame (see Gould, Fig. 2, 0035-0037, and 0045-0047). Thus, applicant's argument is within the scope of the already combined teachings and the obviousness rejection is maintained accordingly.